

GAME AND FISH COMMISSIONER: Game and Fish Commissioner and his deputies have a right to inspect hunting licenses of hunters under what circumstances.

Copy to Board
12-27
December 12, 1933

Honorable John S. Phillips
Prosecuting Attorney
Poplar Bluff, Missouri



Dear Sir:

This Department acknowledges receipt of your letter dated November 24, 1933, as follows:

"We have a situation in this county which has arisen and I would like to have some advice from your office on it.

There are two strong republicans in this county who were caught, one on a Highway and one in a hunting camp, on the 26th day of October, 1933, and both refused to let the officers, to-wit, the Game Warden, inspect their licenses and talked very strong in regard to what they thought about the game wardens.

The question has come up as to whether or not a game warden has a right to inspect hunting licenses in a camp and upon the Highway when the hunter is not in the actual stage of hunting. These particular men have been giving our game warden quite a bit of trouble and I would like to know just how we stand before we go ahead with criminal prosecution.

I would appreciate an opinion from your office in regard to this matter as quickly as possible."

Section 8257 Revised Statutes Missouri 1929 reads as follows:

"It is hereby declared to be the duty of every person holding a license in this state to present the same for inspection by the game and fish commissioner, or any of his deputies or any sheriff, marshal or constable. Any person holding a license and refusing to present the same when a proper demand is made therefor, shall be deemed guilty of a misdemeanor."

Section 8295 Revised Statutes Missouri 1929 reads:

"It is hereby made the duty of every person participating in the privileges of taking or possessing fish, birds, animals, and game, as permitted by this article, to permit the game and fish commissioner or his deputies to inspect, and count such fish, birds, animals, and game, to ascertain whether the requirements of this article are being faithfully complied with. Any person who shall refuse to comply with a demand to permit such inspection and count by any authorized officer of this state, or who shall interfere with such officer or obstruct such inspection or count shall be guilty of a misdemeanor, and upon conviction, shall be fined not less than twenty-five dollars (\$25.00) nor more than one hundred and fifty dollars (\$150.00)."

By virtue of the latter section and Section 8224, Revised Statutes Missouri 1929, the Supreme Court of this state has upheld the right of a game warden to inspect and count fish, birds, animals and game in the possession of a person who has obtained a license to hunt and kill game. In State v. Bennett 315 Mo. 1267, 1275, the Supreme Court, en banc, said:

"From a consideration of the foregoing rulings and many others that might be cited, we are of the opinion that the defendant, by taking out a license to hunt and kill game, the title to which was in the State, acquired a mere privilege to hunt, subject to the restrictions and limitations of the statute; that the statute requiring him to permit the game commissioner or his deputies to inspect and count the fish, birds, animals and game in his possession to ascertain whether the requirements of the statute were being faithfully complied with is a proper and necessary police regulation to discover and prevent easy evasions of the statute, and is not violative of the constitutional provisions invoked; that the statute, being of general application to all persons alike, is not repugnant to the due-process and equal-protection clauses of the Constitution (Duncan v. Missouri, 152 U.S.377), and furthermore, that the defendant cannot play fast-and-loose; that by accepting a hunter's license and exercising the privilege under the restrictions and limitations of the statute, one of which was his duty to submit to the inspection and count of the quail in his possession by the game warden, he waived the constitutional rights invoked so far as applicable to the facts in this case."

I do not know what you mean by the word "caught" as used in your letter. I assume you mean the persons referred to had game on their persons or in the hunting camp, but you do not say whether either of the persons had had issued to them a license to hunt and kill game.

By the provisions of Section 8257 above set out, and in view of the foregoing holding of the Supreme Court of this State, we are of the opinion that if the Game and Fish Commissioner or any of his deputies has reasonable cause to believe that a person is about to or is in the act of going out for the purpose of hunting and killing game, or if such a person is found while in the act of hunting and killing game or if such person is found in a hunting camp

obviously designed as headquarters for expeditions in hunting and killing game, or if the Game and Fish Commissioner or any of his deputies has reasonable cause to believe that a person is returning from the hunting and killing of game or has just returned from such a mission, then under any and all such circumstances the Game and Fish Commissioner and any of his deputies has the right of inspection of the hunting license of such person and refusal to permit inspection of same renders the person so refusing guilty of a misdemeanor. Therefore it becomes necessary for the holder of such license to carry the same with him under the circumstances above pointed out. Of course, if such person did not have a hunting license then he may be punished under other provisions of the law.

The right to inspect the license of a hunter is, we suppose, really for the purpose of determining whether or not such hunter has a license. However, this same fact could be ascertained from the records of the proper office. The right to inspect the license as provided in Section 8257 is in addition to the right to inspect and count fish, birds, animals and game to ascertain whether the requirements of the game and fish law are being faithfully complied with.

Very truly yours,

GILBERT LAMB
Assistant Attorney General,

APPROVED:

ROY McKITTRICK
Attorney General.

GL:LC